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Congress Was Warned of Notification Law Leeway

President Cannot Be Penalized for Failing to Tell of Covert Action 'in a Timely Fashion'

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Six years ago, leading lawmakers warned during debate over the intelligence notification law, which President Reagan has been accused of violating, that future presidents would have too much leeway to avoid telling Congress about covert operations.

The law says that, at a minimum, the president must notify the House and Senate intelligence committees of such operations "in a timely fashion."

Several members of Congress said yesterday that Reagan clearly broke the law by withholding from Congress for 18 months the fact that he had secretly authorized arms shipments to Iran in connection with efforts to free American hostages in the Mideast. There are no penalties for violation of the law.

Sen. William Proxmire (D-Wis.), the lone dissenter when the Senate approved the measure, 89 to 1, said at the time that the notification requirement was the "largest loophole" in the bill and "really ends any kind of effective reporting requirement."

Reagan said at his televised news conference Wednesday night, "I have the right under the law to defer reporting to Congress . . . and defer it until such time as I believe it can safely be done with no risk to others."

But House Majority Leader James C. Wright Jr. (D-Tex.) and Senate Democratic leader Robert C. Byrd (D-W.Va.), among others, challenged that assertion. Byrd said the law provides for a "brief delay . . . That might be 18 hours, but not 18 months. The president does not have the right to delay indefinitely."

Attorney General Edwin Meese III assured the White House orally that Reagan would not be violating the law by failing to tell Congress of the shipments to Iran, according to administration officials. But these officials said there is no written Justice Department opinion providing legal justification for this decision. The officials were unable to provide details of Meese's legal argument.

Lloyd Cutler, who helped negotiate the law as President Jimmy Carter's White House counsel, said the wording was designed to give a president limited room about when to disclose sensitive operations. "It gave the president a little leeway, but certainly not 12 or 18 months," Cutler said. "I don't see how it can be construed the way the president described it."

Cutler said the "timely fashion" language was added as a backup in case a president did not provide what Congress was really seeking in 1980—prior notice of covert operations.

Months before then, Cutler said, Carter did not plan to brief key lawmakers about the aborted 1980 attempt to rescue 52 American hostages in Iran until the operation was under way.

Coincidentally, the Central Intelligence Agency favored this and other changes to the 1947 National Security Act because it limited administration reports about covert activities to the congressional intelligence oversight committees. Under a 1974 amendment in force until six years ago, presidents were required to notify as many as eight committees.

The first part of the notification provision requires intelligence officials to give prior notice of intelligence activities to the House and Senate panels. But it says this must be "consistent" with the executive branch's constitutional responsibilities and "with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods."

If the president determines that "it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States," he may limit advance notice to eight congressional leaders. Reagan did not do so.

Key lawmakers expressed concern about the compromise language. A second section was then added, saying that, if the president does not give prior notice of covert operations, he must brief the intelligence panels "in a timely fashion."